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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,713

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Michael D. Ellis

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WINSTON & STRAWN LLP

PATENT DEPARTMENT

1700 K STREET, N.W.

WASHINGTON, DC 20006

EXAMINER

RICHTMAN, GLENNE

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/645,713

Applicant(s)

ELLIS ET AL.

Examiner

/Glenn Richman/

Art Unit

3764

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-62 and 65-89 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-62 and 65-89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date 6/3/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The rejection from the prior office action is maintained and incorporated by reference.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-62, 65-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mault in view of Stubbs et al.

Mault discloses a heart rate data sensor device that is adapted to be worn on an athletes chest during mobile athletic activity and is configured to wirelessly transmit a heart rate output that is representative of a current heart rate of the athlete (0013), a speed data sensor device that is adapted to be in a physical relationship with the athlete in which the speed data sensor device moves with the athlete's mobile athletic activity and is configured to receive Global Positioning System (GPS) information (0040).

Mault does not disclose wirelessly transmitting a speed of movement output that is representative of the current speed of movement of the athlete.

Stubbs discloses wirelessly transmitting a speed of movement output that is representative of the current speed of movement of the athlete (col. 7, lines 55 – et seq.).

It would have been obvious to use Stubbs means of transmitting a speed of movement, with Mault's device, as it is well known as taught by Stubbs, to transmit a speed of a user, for displaying the instantaneous speed.

Stubbs further discloses a display device that is adapted to be worn on the wrist of the athlete and is configured to receive the heart rate output and the speed of movement output and to display the current heart rate identified by the heart rate data sensor device and the current speed of movement identified by the speed data sensor (col. 7, lines 51 - et seq.); and a storage device that is adapted to be in a physical relationship with the athlete in which the storage device moves with the athlete's mobile athletic activity and is configured to receive the current heart rate output from the heart rate data sensor device and the current speed of movement output from the speed data sensor device and to store a log of data representative of the current heart rate and the current speed of movement for tracking the mobile athletic activity for different sets (col. 10, lines 34 - et seq.).

Mault discloses the storage device is adapted to be clipped to the athlete's clothing (fig. 9), the storage device is adapted to be carried in a pocket of an article of clothing worn by the athlete (inherent the device could be carried in a pocket), the storage device is further configured to operatively communicate with a personal computer of the athlete to download logged data (fig. 1), the display device is configured to display the current time and date (fig. 1), the speed data sensor is configured to wirelessly transmit geographic location information based on the GPS information (fig. 7), the storage device is configured to log geographic location information of the athlete

when the geographic location information is received from the speed data sensor (0028), the display device is programmable to switch the display device to receive the current heart rate output from another heart rate data sensor device and to switch the storage device to receive the current speed of movement output from another speed data sensor device (abstract) the storage device comprises random access memory for storing the logged information (42), the storage device is programmable to be switched to receive the current heart rate output from another heart rate data sensor device and programmable to be switched to receive the current speed of movement output from another speed data sensor device (abstract), the storage device is user-programmable to receive the current heart rate output from a different heart rate data sensor (abstract), the storage device is user-programmable to receive the speed of movement output from a different speed data sensor (0040), additional data sensor devices that are each adapted to be in a physical relationship with the athlete in which the additional data sensor devices move with the athlete's mobile athletic activity, and wherein the storage device and the display device are programmable to receive outputs from the additional sensor devices and to respectively display and store information representative of the additional outputs (0040), the speed data sensor device is further configured to transmit a distance output that is representative of a distance traveled by the athlete (0040).

Stubbs further discloses a data-logging device configured to be worn or carried by the user comprising a second wireless receiver configured to receive information transmitted from another device worn or carried by the user and a memory device

configured to store information received by the second wireless receiver (col. 14, lines 22 – et seq.).

Mault further discloses the user interface device is configured to display position information received from the global positioning system receiver on the display device (fig. 7), the user interface device is configured to display speed information received from the global positioning system receiver on the display device (0040), the user interface device is configured to display heart rate information received from the heart monitor on the display device (138), the user interface device is configured to allow the display of information from devices designed after the manufacture of the user interface device (abstract), the data logging device configured to store position information received from the global positioning system receiver in the memory device (0040), the data-logging device is configured to store speed information received from the global positioning system receiver in the memory device (0040), the data-logging device is configured to store heart rate information received from the heart rate monitor in the memory device (0043), a computer and a connection path in which information stored in the data-logging device is sent to the computer using the connection path (fig. 2), a software application configured to display information received from the data-logging device (0031), the information displayed by the software application comprises information received by the data-logging device from a plurality of other devices (0031).

Stubbs discloses receiving at the personal computer heart rate data collected by a first wireless device worn by a user, receiving at the personal computer speed data collected by a second wireless device worn or carried by the user, and simultaneously

displaying the received heart rate data and the received speed data using the personal computer (col. 3, lines 6 – et seq.), the wireless display device is further configured to include a storage device that stores current heart rate data, current speed or position data, and current time information during multiple set of a particular athletic activity for later download (col. 10, lines 34 - et seq.), the wireless display device is configured to be operable with other wireless devices in addition to the heart rate monitor and the global position system and is further configured to provide the user with the opportunity to mix and match any of the wireless devices to carry with the user for supporting various different activities (col. 8, lines 6 - et seq.), the current speed of movement and GPS information are used to guide the athlete by displaying guidance on the display device (col. 7, lines 55 – et seq.), the guidance comprises position, elevation, and speed information (col. 4, lines 34 - et seq.).

Mault further discloses guidance comprises providing route guidance using the display device (fig. 7), means for logging position data measured by the speed sensor monitor at intervals while following the route, saving the logged position data, and using the saved data for later guidance of the user while the user is wearing or carrying the position monitor (0040), recommending an athletic training route based on desired workout parameters (0040), comparing personal data collected during multiple sessions (0040), means for collecting and annotating position information with text, audio, video, and personal data (0017).

As for claims 79-82, Stubbs discloses the current speed of movement and GPS information are used to guide the athlete by displaying guidance on the display device

(col. 7, lines 55 – et seq.), the current speed of movement and GPS information are used to guide the athlete by displaying guidance on the display device (col. 7, lines 55 – et seq.), the guidance comprises position, elevation, and speed information. 82. (New) The modular personal network of claim 79, wherein the guidance comprises providing route guidance using the display device (col. 4, lines 34 - et seq.).

Mault further discloses means for logging the position data measured by the position monitor at intervals while following the route, saving the logged position data, and using the saved data for later guidance of the user while the user is wearing or carrying the position monitor (0040), the guidance comprises recommending an athletic training route based on desired workout parameters (0040), the guidance comprises comparing personal data collected during multiple sessions (0040), the speed of movement output is position data (0040), the modular wireless network comprises a modular personal network fig. 1.

As for claim 89, given the combination of Mault and Stubbs, it would be obvious to have the global positioning system device, the heart rate monitor, the user interface device, and the data-logging device are modular with respect to one another, given no unexpected results..

Response to Arguments

Applicant's arguments filed 3/18/08 have been fully considered but they are not persuasive.

As to the applicant's arguments:

1. One of ordinary skill in the art would not modify Mault as suggested by the Office Action because such a modification would be contrary to intended goals, objective, and desired operation of Mault. For example modifying Mault to add a speed of movement display on the device in Mault could be detrimental to the weight loss goal and potentially risky as a dieter may misunderstand or misuse the displayed speed of movement information. For example, an individual may seek to increase the speed of her movement to loose weight quicker. Such a misunderstanding is unhealthy for those who are not in good physical condition who may seek to use it as a personal objective to achieve and endanger the health of overweight or obese users seeking to loose weight. In implementation, however, speed of movement is useful for athletes in training to receive feedback on current performance. As such, the suggested combination would be contrary to teachings in Mault and is also likely contrary to Stubbs.

As to 1 above, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

2. Speed of movement would not be a good measure of total caloric or activity measure because it does not take into account whether the user is on an uphill, downhill, or in a car. Moreover, Mault specifically teaches away from such a combination. Mault describes that it displays previously logged information on a user's

PC, post-activity. For example, Mault, specifically states "FIG. 5 shows a sample screen display from a local computing device such as a home computer." (Mault ¶ 40, see also ¶¶ 25, 27, 28.) (emphasis added.) The home computer is not moving with the subject and neither is the PC in any physical relationship with the subject. There is no mention of data logging or storing this data at the oximeter module or at processor/transmitter 66. As such, the Office Actions reliance on Stubbs to describe or suggest this feature appears to be misplaced.

As to 2 above, measuring speed of movement is well known in the art as taught by Stubbs. Adding this feature to Mault would not take away from the capabilities of Mault. Furthermore, as Stubbs discloses transmitting data to a display unit from the device worn by the user, it is obvious that the data is first stored before transmitting.

3. With respect to claims 65 and 68, for example, as described above, Mault or Stubbs, singly or in combination, do not describe or suggest simultaneously displaying on a personal computer heart rate data and speed data collected by a first and second wireless device worn or carried by a user.

As to 3 above, Stubbs discloses the display of heart rate data and the display of speed data (col. 22, lines 26-47) and given that the heart rate and speed are detected by separate monitors, it would have been obvious to have to separate devices worn by the user given no unexpected results.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/
Primary Examiner
Art Unit 3764